

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

FILED

FEB 10 2009

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DISTRICT OF OKLA.
BY [Signature] DEPUTY

REGIONAL AIR, INC.,)

Plaintiff,)

vs.)

No. CIV-08-342-C

CANAL INSURANCE)

COMPANY,)

Defendant.)

INSTRUCTIONS TO THE JURY

Instruction No. 1

OPENING

Members of the Jury, you have heard the evidence in this case and in a few minutes you will hear the arguments of counsel. It is now the duty of the Court to instruct you as to the law applicable to this case. You will be provided a written copy of these instructions for your use during deliberations.

You are the judges of the facts, the weight of the evidence, and the credibility of the witnesses. The weight of the evidence is not determined by the number of witnesses testifying on either side. In determining weight or credibility, you may consider the interest, if any, that a witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice if any has been apparent; the candor, fairness, intelligence and demeanor of the witness; the ability of the witness to remember and relate past occurrences; the witness's means of observation and the opportunity of knowing the

matters about which the witness has testified; the inherent probability or improbability of the testimony; and the extent to which the witness has been supported or contradicted by other credible evidence. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, and aided by the knowledge that you each possess in common with other persons, you will reach your conclusions.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys state them, you should base your decision on what you remember.

It is my job to decide what rules of law apply to the case and all the applicable law is contained in these instructions. You must not follow some and ignore others. Even if you disagree or do not understand the reasons for some of the rules, you are bound to follow them.

Instruction No. 2

BURDEN OF PROOF

The burden is upon the plaintiff in a civil action such as this to prove every essential element of its claim by the greater weight of the evidence.

When I say that Plaintiff has the burden of proof on any proposition by the greater weight of the evidence, or use the expression “if you find,” or “if you decide”, I mean you must be persuaded, considering all the evidence in the case, that the proposition on which such party has the burden of proof is more probably true than not true. The greater weight of the evidence does not mean the greater number of witnesses testifying to a fact, but means what seems to you more convincing and more probably true.

In deciding whether Plaintiff has proven by the greater weight of the evidence any facts in dispute, you may, unless otherwise

instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them.

Instruction No. 3

CORPORATE PARTIES

The corporate parties in this case are entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

Corporations can act only through their officers and employees. Any act or omission of an officer or employee while acting within the scope of his or her employment is the act or omission of that corporation.

Instruction No. 4

ISSUE

I have made rulings as a matter of law in this case that control the issues for you to decide. I have decided that the award of the umpire was not based on gross misconduct or mistake. Therefore, you should disregard all the evidence you heard on that issue. The sole issue remaining for your decision, is whether Plaintiff is entitled to recover the storage costs for the Volvo tractor from the date of the redemption of the lien until today's date. Therefore, your consideration of the evidence should be limited to the testimony you heard from Mr. Cunningham this morning.

In the event of a loss such as the accident here, the insurance policy in place in this action states Plaintiff shall: protect the automobile . . . and any further loss or damage due to the Plaintiff's failure to protect shall not be recoverable under this insurance;

reasonable expenses incurred in affording such protection shall be deemed incurred at Defendant's request.

Instruction No. 5

INTERPRETATION

In deciding this issue, you will need to decide the meaning of the term “reasonable expenses.” That is, does reasonable apply to the recurring monthly charge amount, the length of time or both. In reaching your decision, you must decide what the intent of the parties was when they made their contract. To decide what their intent was you should first examine the language of the contract. You may also consider the circumstances under which the parties made the contract, and what the parties themselves believed the term meant as shown by the evidence. A contract should be interpreted so that it is reasonable and capable of being carried out, if this can be done without changing the intention of the parties.

Instruction No. 6

MEANING OF WORDS

You should interpret the words of the contract in their ordinary and popular sense, unless you decide that the parties used them in some other sense. If the parties used technical words, they should be interpreted in the way that they are usually understood by persons in the business in which they are used, unless clearly used in a different sense. If the parties to the contract have dealt with each other before and their previous dealings showed that they had a common understanding as to the meaning of certain terms, then you should interpret those terms according to their commonly understood meaning.

Instruction No. 7

GENERAL MEASURE OF DAMAGES

If you decide that Plaintiff's actions were reasonable, you must then fix the amount of its damages. This is the amount of money that is needed to put it in as good a position as it would have been if Defendant had paid the reasonable charges for storage.

In reaching this amount, you are instructed that recovery of damages is not allowed for any losses that Plaintiff reasonably could have avoided.

The fact that I instruct you on damages should not be taken as an indication one way or another whether the Plaintiff is entitled to recover anything. This is entirely for you to decide.

If you award damages, they must be reasonable and not speculative.

Instruction No. 8

CLOSING

When you retire you should elect one person as your presiding juror. That person will preside over the deliberations and speak for you with the Court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide. You must not use any method of chance in arriving at your verdict, nor let sympathy or prejudice affect the outcome.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

A verdict form will be sent to the jury room with you, along with these written instructions of the Court. I suggest you study the verdict form early in your deliberations so you know what you must decide. All of you must agree on a verdict and when you do, the presiding juror will sign the verdict. Notify the bailiff when you have arrived at a verdict so that you may return it to open court.

In a few moments, you will go with the bailiff to the jury room to begin your deliberations. If any of you have cellphones or similar devices with you, you are instructed to be sure they are turned off and then to turn them over to the bailiff as you enter the jury deliberation room. They will be held by the bailiff for you and returned to you after your deliberations are completed and during any lunch break or similar period when you are not deliberating. The purpose of this

requirement is to avoid any interruption or distraction during your deliberations and to avoid any question of outside contact with the jury during your deliberations.

No member of the jury should ever attempt to communicate with me except by a signed writing. If it becomes necessary during your deliberation to communicate with me, you may send a note through the bailiff signed by your presiding juror. In the message do not tell me how you stand on your verdict.


ROBIN J. CAUTHRON
UNITED STATES DISTRICT JUDGE